

SLP

GENERAL LAND OFFICE

[Misc. Subs.]

# STATUTES AND REGULATIONS

GOVERNING

## ENTRIES AND PROOF

UNDER THE

# DESERT-LAND LAWS

TOGETHER WITH

SUGGESTIONS TO PERSONS DESIRING TO  
MAKE ENTRIES UNDER SAID LAWS

APPROVED SEPTEMBER 30, 1910



California  
Regional  
Facility

WASHINGTON

GOVERNMENT PRINTING OFFICE

1910





## STATUTES AND REGULATIONS GOVERNING ENTRIES AND PROOFS UNDER THE DESERT-LAND LAWS.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., September 30, 1910.*

1. The laws, or portions of laws, governing the making of desert-land entries, assignments thereof, and the proofs required, will be found printed in full at the end of this circular, and are as follows: Act of March 3, 1877 (19 Stat., 377); March 3, 1891 (26 Stat., 1095); August 30, 1891 (26 Stat., 391); June 27, 1906 (34 Stat., 519); March 26, 1908 (35 Stat., 48); March 28, 1908 (35 Stat., 52); March 4, 1904, amending section 2294, Revised Statutes of the United States (33 Stat., 59); June 22, 1910 (36 Stat., 583); March 3, 1909 (35 Stat., 844); June 25, 1910 (36 Stat., 867), and the act of June 22, 1910 (36 Stat., 583).

### STATES AND TERRITORIES IN WHICH DESERT-LAND ENTRIES MAY BE MADE.

2. The act of March 3, 1877, provided for the making of desert-land entries in the States and Territories of California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, Arizona, and New Mexico. The act of March 3, 1891, extended the provisions of the desert-land laws to Colorado.

### LANDS THAT MAY BE ENTERED AS DESERT LAND.

3. Lands which, by reason of a lack of rainfall, or of sufficient dampness in the soil, will not produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, nor produce an agricultural crop of any kind in amount to make the cultivation thereof reasonably remunerative, and do not contain sufficient moisture to produce a natural growth of trees may be classed as desert in character and, if surveyed and unappropriated, may be entered under the desert-land law.

Lands situated within a notoriously arid or desert region, and themselves previously desert within the meaning of the desert-land law, do not necessarily lose their character as desert lands merely because on account of unusual rainfall for a few successive seasons their productiveness was increased and larger crops were raised thereon; and, under such circumstances, a strong preponderance of evidence will be required to take them out of the class of desert lands. The final proof, however, of one who makes desert entry of such lands will be closely scrutinized as to the sufficiency of his water supply and the adequacy of his ditches and laterals. (37 L. D., 522.)

While lands which border upon streams, lakes, and other bodies of water, or through or upon which there is any stream, body of water, or living spring, may not produce agricultural crops without irrigation, such lands are not subject to entry under the desert-land laws until the clearest proof of their desert character is furnished.

#### WHO MAY MAKE A DESERT-LAND ENTRY.

4. Any citizen of the United States, 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can make the affidavit specified in paragraphs 8 and 9 of these regulations, can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications, can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

At the time of making final proof, however, entrymen of alien birth must have been admitted to full citizenship, which must be shown by a duly certified copy of the certificate of naturalization.

#### QUANTITY OF LAND THAT MAY BE ENTERED.

5. Under the act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the act of March 3, 1891, the area that may be embraced in a desert entry was reduced to 320 acres as the maximum. This limitation must, however, be read in connection with the act of August 30, 1890 (26 Stats., 391), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, if otherwise qualified, may enter 160 acres of land under the desert-land laws. In other words, he may make a desert-land entry for such a quantity of land as, taken together with land acquired by him under the agricultural land laws, since August 30, 1890, and claimed by him under such laws, does not exceed 320 acres in the aggregate. It is to be noted, also, that the act of June 22, 1910 (Public No. 227), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area.

A person's right of entry under the desert-land law is exhausted either by making an entry or by taking an assignment of an entry, in whole or in part, whether the maximum quantity of land, or less, is entered or received by assignment; except, however, that under the act of March 26, 1908, if a person, prior to the passage of that act, has made an entry and has abandoned, lost, or forfeited the same, or has relinquished without receiving a valuable consideration therefor, such person may make a second entry. In such cases, however, it must be shown when the former entry was abandoned, lost, or forfeited, that it was not assigned, in whole or in part, canceled for fraud, or relinquished for a valuable consideration, and it must be so

described by section, township, and range, or by date and number, as to be readily identified on the records of the General Land Office. The showing required must be by affidavit of applicant wherein the facts upon which is based his claim of right to make a second desert-land entry are set forth fully and in detail. This affidavit must be corroborated, as far as possible, by the affidavit of one or more persons having personal knowledge of the facts stated by applicant. Registers and receivers are authorized to allow a second desert-land entry in any case wherein it is shown that applicant is entitled to make such entry under the provisions of said act of March 26, 1908. Otherwise the application will be noted on the district office records and forwarded to the General Land Office with appropriate recommendation.

#### **LAND MUST BE IN COMPACT FORM.**

6. Land entered under these laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable on account of the previous appropriation of adjoining lands, or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered, and the surrounding tracts, should be stated, in order that the General Land Office may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entry-men should make a complete showing in this regard, and should state the facts and not the conclusions they derive from the facts, as it is the province of the Land Department of the Government to determine whether or not, from the facts stated, the entry should be allowed.

#### **HOW PREFERENCE RIGHT MAY BE ACQUIRED ON UNSURVEYED LAND.**

7. Prior to the act of March 28, 1908, a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that if a duly qualified person shall go upon a tract of unsurveyed desert land and reclaim, or commence to reclaim, the same, he shall be allowed a preference right of ninety days after the filing of the plat of survey in the local land office to make entry of the land. To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim, or posting notices thereof on the land claimed, would not secure the preference right as against an adverse claimant, but occupation in entire good faith, accompanied by acts and works looking to the ultimate reclamation of the land, are necessary and required.

#### **HOW TO PROCEED TO MAKE A DESERT-LAND ENTRY.**

8. A person who desires to make entry under the desert-land laws must file with the register and receiver of the proper land office a declaration, or application, under oath, showing that he is a citizen of the



United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is also a bona fide resident of the State or Territory in which the land sought to be entered is located. He must also state that he has not previously exercised the right of entry under the desert-land laws by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural-land laws, to lands which, together with the land applied for, will exceed, in the aggregate, 320 acres; and that he intends to reclaim the lands applied for, by conducting water thereon, within four years from the date of his application. This declaration must contain a description of the land, by legal subdivisions, section, township, and range.

9. Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The affidavit, which is made a part of the application, may not be made by an agent or upon information and belief, and the register and receiver must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge and that it was obtained from a personal examination of the lands. The blank spaces in the application must be filled in with a complete statement of the facts, showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the affidavits of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

The statements in the blank form of declaration and accompanying affidavits, as to present character of the land, may be modified so as to show the facts, in any case wherein application is made for entry of lands reclaimed, or partially reclaimed, by applicant, before survey, under the provisions of the act of March 28, 1908: as to a former entry, in case application is made for a second entry under the provisions of the act of March 26, 1908, and as to the character of the land, with respect to coal deposits in case application is made, under the provisions of the act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal.

10. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also, and where the residence is in a city, the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the local officers of such change, for upon failure to do so their entries may be canceled upon notice sent to the address of record, but not received by claimant. The register and receiver will be careful to note the post-office address on their records.

11. The application and corroborating affidavits, and all other proofs, affidavits, and oaths of any kind whatsoever, required by law to be made by applicants and entrymen and their corroborating wit-

nesses, must be sworn to before the register or receiver of the land district in which the land is located, or before a United States commissioner, if the lands are within the boundaries of a State, or a commissioner of a court exercising federal jurisdiction, if in a Territory, or before a judge or clerk of a court of record, in the county, or land district, in which the land is situated. The only conditions permitting the taking of such evidence outside the proper land district is where the county in which the land is situated lies partly in two or more land districts, in which case such evidence may be taken anywhere in the county. In case the application and affidavits are not made before either of the local officers, or in the county in which the land is located, they must be made before some one of the officers above named, in the land district nearest to, or most accessible from, the land, which latter fact must be shown by affidavit of applicant. The declaration of applicant and the affidavits of his two witnesses must, in every instance, be made at the same time and place and before the same officer.

12. Persons who make desert-land entries must acquire a clear right to the use of sufficient water to irrigate and reclaim the whole of the land entered, or as much of it as is susceptible of irrigation, and of keeping it permanently irrigated. Therefore, if a person makes an entry before he has taken steps to acquire a water right, he does so at his own risk, because, ordinarily, one entry will exhaust his right and he will not be repaid the money paid at the time of making the entry.

13. At the time of filing his application with the register and receiver the applicant should also file a map, showing the plan by which he proposes to conduct water upon the land and the manner by which he intends to irrigate the same, and at the same time he must pay the receiver the sum of 25 cents per acre for the land applied for. The receiver will issue a receipt for the money, and the register and receiver will jointly issue a certificate showing the allowance of the entry. This application will be given its proper serial number at the time it is filed, and at the end of each month an abstract of collections under these laws will be transmitted to the General Land Office.

#### ASSIGNMENTS.

14. While by the act of March 3, 1891, assignments of desert-land entries were recognized, the Land Department, largely for administrative purposes, held that a desert-land entry might be assigned as a whole, or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for the assignment of such entries, in whole or in part; but this does not mean that less than a legal subdivision may be assigned. Therefore, no assignment, otherwise than by legal subdivisions, will be recognized.

15. The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment, unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not a resident citizen of the State or Territory wherein the land involved is located, or, if he has made a desert-land entry in his own right, he can not take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the

making of an entry, and this being so, no person is allowed to take more than one entry by assignment. The desert-land right is exhausted either by making an entry or by taking one by assignment.

However, in view of the practice that obtained in the General Land Office prior to March 28, 1908, of recognizing the right of a person to make an entry, and also to take one or more entries by assignment, the aggregate area of the land embraced in all such entries not exceeding 320 acres, such entries and assignments so made or taken will not now be disturbed. But all assignments and entries made subsequent to the approval of the act of March 28, 1908, must be governed by the terms of that act, which is held to mean that the desert-land right is exhausted either by making an entry or by taking one by assignment. Said act provides that no assignment to, or for the benefit of, any corporation or association shall be authorized or recognized.

16. As stated above, desert-land entries may be assigned, in whole or in part, and, as evidence of the assignment, there should be transmitted to the General Land Office the original deed of assignment, or a certified copy thereof. Where the deed of assignment is recorded, a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted. Attention is called to the fact that copies of deeds of assignment certified by notaries public or justices of the peace, or, indeed, any other officers than those who are qualified to take proofs and affidavits in desert-land cases, will not be accepted.

An assignee must file, with his deed of assignment, an affidavit (Form 4-274a) showing his qualifications to take the entry assigned to him. He must show what entries have been made by, or assigned to, him under the agricultural laws, and he must also show his qualifications as a citizen of the United States, that he is 21 years of age or over, and also that he is a resident citizen of the State or Territory in which the land assigned to him is situated. In short, the assignee must possess the qualifications necessary to enter the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D., 541; 33 L. D., 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provision of law authorizing the assignments of desert entries, in whole or in part, furnishes no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent, and to thereafter proceed with the submission of final proof in furtherance of such contract. The sale of the land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D., 459.) The assignor of a desert-land entry may execute the assignment papers wherever he may be before any officer authorized to take acknowledgments, but the assignee must execute the affidavit (Form 4-274a), and all other required oaths and affidavits, before some one of the officers specified and in the manner set out in paragraph 11 of this circular.



No assignments of desert-land entries or parts of entries are conclusive until examined in the General Land Office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectually as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the General Land Office, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor.

#### ANNUAL PROOF.

17. In order to test the sincerity and good faith of the claimant under the desert-land laws, and to prevent the reservation or segregation of tracts of public land in the interest of persons having no intention of reclaiming the land, but rather, by payment of the initial sum of 25 cents per acre, hoping to gain the use of the land for a number of years, Congress in the act of March 3, 1891, made the requirement that a map be filed at the initiation of the entry, showing the mode of contemplated irrigation and the proposed source of the water supply, and that there be expended yearly for three years from the date of the entry not less than \$1 for each acre of the tract entered, making a total of not less than \$3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. The said act, however, authorizes the submission of final proof at an earlier date than four years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than \$3 per acre have been made. Proof of these expenditures must be made before some officer authorized to administer oaths in desert-land cases. (See par. 11 hereof.) This proof, which is known as yearly or annual proof, must be made by applicant, whose affidavit must be corroborated by affidavits of two reputable witnesses, all of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof.

18. Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land, for roads where they are necessary, for erecting stables, corrals, etc., for digging wells, where the water therefrom is to be used for irrigating the land, and for leveling and bordering land proposed to be irrigated will be accepted. Expenditures for fencing all or a portion of the claim may be accepted, in case it is clearly shown that the fence is necessary for the protection of a portion of the land being prepared for irrigation and cultivation or for the protection of canals, ditches, etc., thereon. Expenditures for surveying, for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil may be accepted.

Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compen-

sated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work may not be computed in the cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for a pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

No expenditure for stock or interest in an irrigating company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a special agent, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the department. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount required in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof. A certificate of the Secretary, or other qualified officer of the company involved, must be furnished, showing the extent of actual water appropriation by the company, to what extent water had been previously disposed of, quantity of water carried under the stock or interest purchased by the desert claimant, and a statement showing the previous ownership of the shares of stock forming the basis of proffered proof, and a description of the land in connection with which such stock has been previously issued or used. Circumstances in connection with stock which has been previously made the basis of proof or annual expenditure will be carefully scrutinized and inquired into.

Registers and receivers are instructed to carefully examine all annual proofs filed and are authorized to suspend same, with notice to claimants to cure defects within thirty days, or to reject, subject to the usual right of appeal to the Commissioner of the General Land Office. These proofs are to be forwarded with the regular monthly returns.

At the end of each year, if the required proof of actual expenditures has not been made, the register and receiver will send the entryman notice and allow him sixty days in which to submit such proof. If the proof is not furnished as required, the fact that notice was served upon the claimant should be reported to the General Land Office, with evidence of service, whereupon the entry will be canceled. Registers and receivers should keep on hand a sufficient supply of blank forms used in notifying the entrymen that annual proofs are due, and they should send such notices whenever necessary, without waiting for instructions from the General Land Office.

19. Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the

three years may be offered whenever the amount of \$3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

#### FINAL PROOF.

20. The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed four years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of \$3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been actually cultivated with irrigation, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with. The cultivation and irrigation of the one-eighth of the entire area may be had in a body on one legal subdivision or may be distributed over several subdivisions. When an entryman has reclaimed the land and is ready to make final proof, he should apply to the register and receiver for a notice of intention to make such proof. This notice must contain a complete description of the land and must describe the entry by giving the number thereof and the name of the entryman. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making the proof.

21. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the land (see 38 L. D., 131), and it must also be posted in a conspicuous place in the local land office for the same period of time. The date fixed for the taking of the proof must be at least thirty days after the date of first publication. Proof of publication must be made by the affidavit of the publisher of the newspaper or by some one authorized to act for him. The register will certify to the posting of the notice in the local office.

22. At the time and place mentioned in the notice, and before the officer named therein, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. This proof may be taken by any one of the officers named in paragraph 11 hereof. All claimants, however, are advised that, whenever possible, they should make proof before the register or receiver, because by doing so, they may, in many instances, avoid such delay as results from the practice whereby proofs submitted before officers other than the register or receiver are frequently suspended for investigation by a special agent.

The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the



others. In every instance where, for any reason whatever, final proof is not submitted within the four years prescribed by law, or within the period of an extension granted for submitting such proof, an affidavit should be filed by claimant, with the proof, explaining the cause of delay.

#### IRRIGATION, CULTIVATION, AND WATER RIGHTS.

23. The final proof must show specifically the source and volume of the water supply and how it was acquired and how maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvement of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw the land irrigated should be specifically stated.

24. While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L. D., 420.) Furthermore, the final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If there are any high points or any portions of the land, which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply, such subdivision must be relinquished.

25. As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass, or that grass sufficient to support stock has been produced on the land, as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay, of merchantable value, will be accepted as sufficient compliance with the requirements as to cultivation (32 L. D., 456). In such cases, however, the facts must be stated, and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

26. The final proof must also show that the claimant has made the preliminary filings and taken such other steps as are required by the laws of the State or Territory in which the land is located, for the purpose of securing a right to the use of a sufficient supply of water to irrigate successfully all of the irrigable land embraced in his entry. It is a well-settled principle of law in all of the States and Territories in which the desert-land acts are operative, that actual application to



a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use, within a reasonable time, constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule, result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end, the proof must at least show that water, which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the state or territorial laws governing the appropriation by individuals of the waters of public streams or other sources of supply, as shown by the record evidence of such right which accompanies the proof, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated and that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system and that he is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

27. In those States where entrymen have made applications for water rights and have been granted permits, but where no final adjudication of the water right can be secured from the state authorities, owing to delay in the adjudication of the water courses, or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where, under the local laws, it is absolutely impossible for the entryman to secure final title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished.

28. Where final proof is not made within the period of four years, or within the period for which an extension of time has been granted, the register and receiver should send the claimant a notice, addressed to him at his post-office address of record, informing him that he will be allowed ninety days in which to submit final proof. Should no action be taken within the time allowed, the register and receiver will report that fact, together with evidence of service, to the General Land Office, whereupon the entry will be canceled.

**EXTENSION OF TIME IN SUBMITTING PROOF UNDER CERTAIN CONDITIONS.**

29. Under the provisions of the act of March 28, 1908, the period of four years may be extended, in the discretion of the Commissioner of the General Land Office, for an additional period not exceeding three years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the four years. This does not mean that the period within which proof may be made will be extended as a matter of course for three years. The statute authorizes the Commissioner of the General Land Office to grant the extension, in his discretion, for such a period as he may deem necessary for the completion of the reclamation, not exceeding three years, but such applications for extension will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of four years was due to no fault on the part of the entryman, but to some unavoidable delay in the construction of the irrigation works, for which he was not responsible and could not have readily foreseen. Under no other condition is an extension of time to make final proof authorized, except in cases falling under section 5 of the act of June 27, 1906, pertaining to the entry of land within the limits of reclamation projects.

An entryman who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the register and receiver an affidavit setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This affidavit should be executed before one of the officers named in paragraph 11 of this circular and must be corroborated by two witnesses who have personal knowledge of the facts, and the register and receiver, after carefully considering all of the facts, will forward the application to the General Land Office, with appropriate recommendation thereon. Inasmuch as registers and receivers reside in their respective districts, they are presumed to have more or less personal knowledge of the conditions existing therein, and for that reason much weight will be given their recommendations.

**PAYMENTS FEES.**

30. At the time of making final proof the claimant must pay to the receiver the sum of \$1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to \$1.25 per acre, which is the price to be paid for all lands entered under the desert-land law, regardless of their location. The receiver will issue a receipt for the money paid, and, if the proof is satisfactory, the register will issue a certificate in duplicate and deliver one copy to the entryman and forward the other copy to the General Land Office at the end of the month during which the certificate was issued.

If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue, in like manner, to the heirs or devisees.

When final proof is made on an entry made prior to the act of March 28, 1908, for unsurveyed land, if such proof is satisfactory, the register and receiver will approve the same and forward it to the General Land Office without collecting the final payment of \$1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor, if the proof is taken before the register and receiver. As soon as the land is surveyed they will call upon the entryman to make proof, in the form of an affidavit, duly corroborated, showing the legal subdivisions covered by his entry. When this has been done the register and receiver will, in the absence of conflict or other objection, correct their records so as to make them describe the land by legal subdivisions, and, if final proof has been made and found satisfactory and no other objections exist, final papers should be issued upon payment of the proper amount.

31. No fees or commissions are required of persons making entry under the desert-land laws, except such fees as are paid to the officers for taking the affidavits and proofs. The only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of \$1 an acre, to be paid at the time of making final proof. Where final proofs are made before the register or receiver in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana they will be entitled to receive, jointly, 22½ cents for each 100 words of testimony reduced to writing; in all other States they will be allowed 15 cents per 100 words for such service. The United States commissioners, United States court commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive \$1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

#### CONTESTS AND RELINQUISHMENTS.

32. Contests may be initiated against a desert-land entry for illegal inception, abandonment, or failure to comply with the law after entry. Successful contestants will be allowed a preference right of entry for thirty days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the register will give the same notice and is entitled to the same fee for notice as in other cases. However, see, in this connection, the act of June 25, 1910 (36 Stat., 867).

33. A desert-land entry may be relinquished at any time by the party owning the same, and when relinquishments are filed in the local land office the entries will be canceled by the register and receiver in the same manner as in homestead, preemption, and other cases, under the first section of the act of May 14, 1880 (21 Stat., 140).

#### DESERT-LAND ENTRIES WITHIN A RECLAMATION PROJECT.

34. By section 5 of the act of June 27, 1905 (34 Stat., 519), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improve-



ments on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the reclamation act of June 17, 1902, will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

35. This act applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project or by any withdrawal of public lands under the reclamation act, from improving or reclaiming the lands covered by their entries.

36. No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the local land office for the district in which his lands are situated an affidavit showing in detail all of the facts upon which he claims the right to be excused. This affidavit must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

37. The register and receiver will at once forward the application to the engineer in charge of the reclamation project under which the lands involved are located and request a report and recommendation thereon. Upon the receipt of this report the register and receiver will forward it, together with the applicant's affidavit and their recommendation, to the General Land Office, where it will receive appropriate consideration and be allowed or denied, as the circumstances may justify.

38. Inasmuch as entrymen are allowed one year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of this act are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hinderance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his affidavit explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

39. An entryman will not need to invoke the privileges of this act in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of a reclamation project, the affidavit explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

40. When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, as indicated herein, he will be



excused, and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

41. If after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman will begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must comply with all the provisions of the act of June 17, 1902, and must relinquish all the land embraced in his entry in excess of 160 acres, and upon making final proof and complying with the terms of payment prescribed in said act of June 17, 1902, he shall be entitled to patent.

42. Special attention is called to the fact that nothing contained in the act of June 27, 1906, shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation act of June 17, 1902, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

43. Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish all of the lands embraced in their entries in excess of 160 acres whenever they are required to do so through the local land office and must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project.

44. All previous rulings and instructions not in harmony herewith are hereby vacated.

FRED DENNETT, *Commissioner*.

Approved.

FRANK PIERCE,  
*Acting Secretary.*

## STATUTES.

### An Act to Provide for the Sale of Desert Lands in Certain States and Territories.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of twenty-five cents per acre—to file a declaration under oath with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section;<sup>a</sup> by conducting water upon the same, within the period of three years<sup>b</sup> thereafter: *Provided, however,* That the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands, and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years<sup>b</sup> after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him: *Provided,* That no person shall be permitted to enter more than one tract of land and not to exceed six hundred and forty acres, which shall be in compact form.

Sec. 2. That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

Sec. 3. That this act shall only apply to and take effect in the States of California, Oregon, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the Commissioner of the General Land Office.

Approved, March 3, 1877 (19 Stat., 377).

---

<sup>a</sup> Limited to 320 acres by act of March 3, 1891 (26 Stat., 1095).

<sup>b</sup> Time extended to four years by act of March 3, 1891, *supra*.

## Three Hundred and Twenty Acre Limitation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

\* \* \* \* \*

No person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry, or settlement is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

Approved, August 30, 1890. (26 Stat., 391.)

## An Act to Repeal Timber-Culture Laws, and for Other Purposes.

\* \* \* \* \*

SEC. 2. That an act to provide for the sale of desert lands in certain States and Territories, approved March third, eighteen hundred and seventy-seven, is hereby amended by adding thereto the following sections:

SEC. 4. That at the time of filing the declaration hereinbefore required the party shall also file a map of said land which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections or fractional parts of sections of desert lands may associate together in the construction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements.

SEC. 5. That no land shall be patented to any person under this act unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least three dollars per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid, the party so entering shall expend not less than one dollar per acre for the purposes aforesaid; and he shall in like manner expend the sum of one dollar per acre during the second and also during the third year thereafter, until the full sum of three dollars per acre is so expended. Said party shall file during each year with the register, proof, by the affidavits of two or more credible witnesses, that the full sum of one dollar per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid, the lands shall revert to the United States, and the twenty-five cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of three dollars per acre: *Provided*, That proof be further required of the cultivation of one-eighth of the land.

SEC. 6. That this act shall not affect any valid rights heretofore accrued under said act of March third, eighteen hundred and seventy-seven, but all bona fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed; or said claims, at the option of the claimant, may be perfected and patented under the provisions of said act, as amended by this act, so far as applicable; and all acts and parts of acts in conflict with this act are hereby repealed.

SEC. 7. That at any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold, by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands; but this section shall not apply to entries made or initiated prior to the approval of this act: *Provided, however,* That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding act shall be subject to contest, as provided by the law relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands and moneys paid therefor shall be forfeited to the United States.

SEC. 8. That the provisions of the act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado, as well as the States named in the original act; and no person shall be entitled to make entry of desert land except he be a resident citizen of the State or Territory in which the land sought to be entered is located.

\* \* \* \* \*

Approved, March 3, 1891 (26 Stat., 1095).

---

Section 2294, United States Revised Statutes, as Amended by Act of March 4, 1904 (33 Stat., 59)

SEC. 2294. That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising federal jurisdiction in the Territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated: *Provided,* That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and



commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

"For each affidavit, twenty-five cents.

"For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

"For each deposition of claimant or witness, prepared by the officer, one dollar.

"Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars."

\* \* \* \* \*

**An Act Providing for the Subdivision of Lands Entered Under the Reclamation Act, and for Other Purposes.**

\* \* \* \* \*

SEC. 5. That where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and the desert-land entryman has been or may be directly or indirectly hindered, delayed, or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry: *Provided*, That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert-land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been filed: but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry, the entryman shall thereupon comply with all the provisions of the aforesaid act of June seventeenth, nineteen hundred and two, and shall relinquish all land embraced within his desert-land entry in excess of one hundred and sixty acres, and as to such one hundred and sixty acres retained, he shall be entitled to make final proof and

obtain patent upon compliance with the terms of payment prescribed in said act of June seventeenth, nineteen hundred and two, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said reclamation act.

Approved, June 27, 1906 (34 Stat., 520).

---

**An Act Providing for Second Desert-Land Entries.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who prior to the passage of this act has made entry under the desert-land laws, but from any cause has lost, forfeited, or abandoned the same, shall be entitled to the benefits of the desert-land law as though such former entry had not been made, and any person applying for a second desert-land entry under this act shall furnish the description and date of his former entry: *Provided*, That the provisions of this act shall not apply to any person whose former entry was assigned in whole or in part or canceled for fraud, or who relinquished the former entry for a valuable consideration.

Approved, March 26, 1908 (35 Stat., 48).

---

**An Act Limiting and Restricting the Right of Entry and Assignment Under the Desert-Land Law and Authorizing an Extension of Time within which to Make Final Proof.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act the right to make entry of desert lands under the provisions of the act approved March third, eighteen hundred and seventy-seven, entitled "An act to provide for the sale of desert lands in certain States and Territories," as amended by the act approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws, and for other purposes," shall be restricted to surveyed public lands of the character contemplated by said acts, and no such entries of unsurveyed lands shall be allowed or made of record: *Provided, however*, That any individual qualified to make entry of desert lands under said acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area three hundred and twenty acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public land surveys, within ninety days after the filing of the approved plat of survey in the district land office.

SEC. 2. That from and after the date of the passage of this act no assignment of an entry made under said acts shall be allowed or recognized, except it be to an individual who is shown to be qualified to make entry under said acts of the land covered by the assigned entry, and such assignments may include all or part of an entry; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized.

SEC. 3. That any entryman under the above acts who shall show to the satisfaction of the Commissioner of the General Land Office

that he has in good faith complied with the terms, requirements, and provisions of said acts, but that because of some unavoidable delay in the construction of the irrigating works, intended to convey water to the said lands, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said land, as required by said acts, shall, upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the Commissioner of the General Land Office, within which to furnish proof, as required by said acts, of the completion of said work.

Approved, March 28, 1908 (35 Stat., 52).

---

**An Act for the Protection of the Surface Rights of Entrymen.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who has in good faith located, selected, or entered under the non-mineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: *Provided*, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit: *Provided further*, That nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

Approved, March 3, 1909 (35 Stat., 844).

---

**An Act to Provide for Agricultural Entries on Coal Lands.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act unreserved public lands of the United States,

exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert-land law, to selection under section four of the act approved August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and to withdrawal under the act approved June seventeenth, nineteen hundred and two, known as the Reclamation Act, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. But no desert entry made under the provisions of this act shall contain more than one hundred and sixty acres, and all homestead entries made hereunder shall be subject to the conditions, as to residence and cultivation, of entries under the act approved February nineteenth, nineteen hundred and nine, entitled "An act to provide for an enlarged homestead:" *Provided*, That those who have initiated non-mineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

SEC. 2. That any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section four of the act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and the Secretary of the Interior in withdrawing under the reclamation act lands classified as coal lands, or valuable for coal, with a view of securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of this act.

SEC. 3. That upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the lands so patented, together with the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertak-



ing in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided further*, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

Approved, June 22, 1910 (Sess. Laws, 2d sess., 61st Cong., 583).

---

**An Act for the Relief of Assignees in Good Faith of Entries of Desert Lands in Imperial County, California.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any person, other than a corporation, who has in good faith heretofore acquired by assignment a desert-land entry, which entry is regular upon its face, in the belief that he was obtaining a valid title thereto, which assignment was accepted when filed at the local land office of the United States and recognized at the General Land Office as a proper transfer of such entry, shall be entitled to complete the entry so acquired, notwithstanding any contest that has been or may be filed against such entry, based upon a charge of fraud of which the assignee had no knowledge: *Provided, however*, That this act shall only apply to any person who at the time of receiving such assignment was without notice of any fraud in the entry assigned or in any annual proof made concerning the same: *Provided further*, That patent shall not issue to any such assignee unless he shall affirmatively establish, by his evidence, under oath, good faith and lack of notice of fraud, and by the testimony, under oath, of himself and at least two witnesses that expenditure in the total amount and cultivation and reclamation to the full extent required by law have been actually made and accomplished: *And provided further*, That nothing herein contained shall be construed to waive or avoid liability for any fraud or violation of the law on the part of the person committing the same.

SEC. 2. That where a person having made entry under the desert-land law was thereafter permitted by the Land Department to hold another entry or entries by assignment, or where a person having previously perfected title under assignment of a desert-land entry, or having held land under assignment to the amount of three hundred and twenty acres or more at different times, was thereafter permitted by the Land Department to make an entry in his own right, or to hold other lands under assignment, such persons, or their lawful assignees, shall be, upon showing full compliance with all requirements of existing law as to expenditure, reclamation, and cultivation, permitted to complete title to the land now held by them, notwithstanding any contest that may have been or may hereafter be filed against the entry based upon the charge that the present claimant has exhausted his

right under the desert-land law by reason of having previously made an entry or held land under an assignment as above detailed: *Provided, however*, That this section shall not be applicable to entries made or taken by assignment subsequently to November thirtieth, nineteen hundred and eight: *Provided further*, That no person shall be entitled to the benefits of either the first or second section of this act who has heretofore acquired title to three hundred and twenty acres of land under the desert-land laws; nor shall this act be construed to modify in any manner the provisions of the act of August thirtieth, eighteen hundred and ninety (Twenty-sixth Statutes, three hundred and ninety-one), and the seventeenth section of the act of March third, eighteen hundred and ninety-one (Twenty-sixth Statutes, ten hundred and ninety-five), restricting the quantity of lands that may be acquired under the agricultural-land laws.

SEC. 3. The provisions of this act shall apply to Imperial County, California, only.

Approved June 25, 1910 (Sess. Law, 2d sess., 61st Cong., 867).

## O









University of California  
SOUTHERN REGIONAL LIBRARY FACILITY  
405 Hilgard Avenue, Los Angeles, CA 90024-1388  
Return this material to the library  
from which it was borrowed.

---

--	--

UC SOUTHERN REGIONAL LIBRARY FACILITY



A 001 221 198 3

Univers  
South  
Libr